

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-452-S - ORDER NO. 92-68 ✓
JANUARY 29, 1992

IN RE: Shumaker Land Company,)	
)	
Complainant,)	
)	ORDER DENYING
vs.)	PETITION FOR
)	REHEARING AND/OR
Midlands Utility, Inc.,)	RECONSIDERATION
)	
Respondent.)	
)	

This matter is before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing and/or Reconsideration of Order No. 91-1135 filed by Midlands Utility, Inc. (Midlands or the Company). Order No. 91-1135 compelled Midlands to sell Complainant Shumaker Land Company (Shumaker) 76 sewer taps at \$500 a piece at such time as Shumaker applied for the taps. After full consideration of Midlands' arguments, the Commission denies the Petition for Rehearing and/or Reconsideration but clarifies Order No. 91-1135 as follows.

In its Petition, Midlands asserts the Commission incorrectly stated that it was the Company's position that Shumaker had no right to purchase any sewer taps under the terms of the parties' 1986 contract. The Commission agrees that on page 1 of Order No. 91-1135 it misstated Midlands' position. However, the Commission

finds this misstatement inconsequential in that it properly stated Midlands' argument in its Finding of Fact #2.

Midlands contends the Commission improperly concluded that the language "beyond these taps" in the South Carolina Supreme Court's Amended Memorandum Opinion referred to both South Woodside Parkway's (SWP's) purchase of more than 56 taps and to Shumaker's purchase of more than 76 taps. The Commission disagrees.

Pursuant to Order Nos. 88-190, Docket No. 87-433-S (February 18, 1988) and 88-1076, Docket No. 88-269-S (October 18, 1988), the Commission concluded that, under the terms of the parties' contract, Shumaker and SWP had the right to purchase sewer taps from Midlands for \$500 each. Midlands appealed these orders. Although SWP intervened as a party-defendant, Shumaker did not participate in the appeal. The circuit court and, ultimately, the South Carolina Supreme Court affirmed the Commission's decision. Although the Supreme Court did not refer to Shumaker's right to purchase taps at \$500 each, but to SWP's right to purchase 56 taps at \$500 each, the Court nonetheless affirmed the lower court and, consequently, the Commission's orders in their entirety. The only reasonable interpretation of the language "beyond these taps" is that, consistent with SWP's right to purchase 56 taps at \$500 each and any additional taps at Midlands' current plant expansion and modification fee, Shumaker has the right to purchase 76 taps¹ at \$500 a piece and additional taps in keeping with Midlands' current

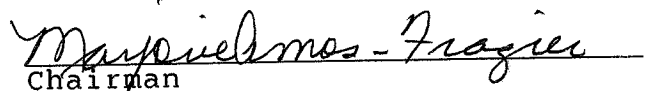
1. Midlands has not disputed that Shumaker has the right to purchase 76 taps.

plant expansion and modification fee. The Commission concludes that its interpretation of the Supreme Court's Amended Memorandum Opinion is correct because if the Supreme Court had found that Shumaker was not entitled to purchase any sewer taps at \$500 each, the decision would have been contrary to the Commission's orders. Consequently, the Supreme Court would have reversed that portion of the Commission's orders which approved Shumaker's right to purchase sewer taps for \$500 from Midlands.

Finally, the Commission agrees that its counsel's concession before the Supreme Court constitutes a binding statement on behalf of the Commission. Nonetheless, the Commission concludes that its counsel's concession at the oral argument before the Supreme Court is consistent with the Commission's interpretation of the Amended Memorandum Opinion.

Accordingly, Midlands' Petition for Rehearing and/or Reconsideration is denied. Order No. 91-1135 is hereby modified as reflected in this order.

IT IS SO ORDERED.


Chairman

ATTEST:


Executive Director

(SEAL)